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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 168.

FRED L. SHUTTLESWORTH,
Petitioner,

vs.

CITY OF BIRMINGHAM,
Respondent.

RESPONDENT'S BRIEF IN REPLY TO PETITIONER'S BRIEF ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA.

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Petitioner's brief refers correctly to the reporter citations of the opinions below. They are 149 So. 2d 921 and 149 So. 2d 923.

Under the heading "Jurisdiction" respondent rests his claim for jurisdiction of this Court on 28 United States Code, Section 1257 (3) stating that "Petitioner having asserted below and claiming here the deprivation of rights, privileges and immunities secured by the Constitution of the United States." The record does not bear out the

statement of Petitioner. Petitioner did not raise any issue whatsoever, constitutional or otherwise before the Supreme Court of Alabama, the Court of last resort in this state. He completely ignored Supreme Court Rule 32, which **mandatorily** requires the dismissal of **any** petition for certiorari not filed as required by this rule. An examination of the cases hereinafter cited will show that the Supreme Court of Alabama has always considered that a violation of this rule under the **same** conditions that Petitioner violated it **requires** the Court to dismiss a petition for certiorari. This rule has been applied equally against all litigants since its adoption as a rule of the Supreme Court. Does the Petitioner desire **equal** treatment of the Supreme Court of Alabama with other litigants or does he insist that he should receive **preferential** treatment? Should he expect the Supreme Court of Alabama to take the position that he need not comply with the mandatory rules of that Court? If so, on what grounds does he claim preferential treatment? Certainly under the decisions of this Court the Supreme Court of Alabama as well as other state agencies is required to apply their rules and the law without regard to race, religion or creed. The Petitioner has repeated the word "discretionary" in relation to the Alabama Supreme Court rule which he ignored apparently in the hope that this Court will hold that the application of such rule is discretionary. But the application of the rule is not discretionary. If it **were** discretionary, should the rule be applied to Jones and waived for Smith? The rule cannot be said to have been adopted or enforced because of so called civil rights litigation because it long anti dates the reversal of the separate but equal doctrine by this Court and has consistently been enforced over the years in all cases civil and criminal where certiorari to the Alabama Court of Appeals was applied for. Footnote 11 on page 25 of Respondent's brief seems to indicate that one may look outside the

record for the reason why paper other than transcript paper was used and attempts to explain it by a statement that an "extremely heavy volume of civil rights litigation (is) handled by only a very few lawyers in some states . . .." We submit that such is not the case and if it were so, it would not abrogate a rule of Court applicable to all alike, the busy, those with leisure, the white and the black, and enforced over the years without discrimination of any sort. The Supreme Court of Alabama has consistently ordered stricken every application for certiorari to the Court of Appeals of Alabama which was not submitted on transcript paper as mandatorily required by Supreme Court Rule 32. The Petitioner chose to ignore this rule and thereby has not presented to the Supreme Court of Alabama in the manner prescribed by **its rules the alleged constitutional questions which he is attempting to present to this Court.**

The Opinions of the Supreme Court of Alabama wherein petitions for certiorari to the Court of Appeals of Alabama were stricken because such petitions were not on transcript paper are too numerous to mention. A few of such cases are the following: **Stovall v. State**, 257 Ala. 116, 57 So. 2d 641; **Duckett v. State**, 257 Ala. 589, 60 So. 2d 357; **Smith v. State**, 264 Ala. 264, 86 So. 2d 842; **Ladd v. State**, 266 Ala. 586, 98 So. 2d 59; **McDonald v. Amason**, 267 Ala. 654, 104 So. 2d 719; **Accardo v. State**, 268 Ala. 293, 105 So. 2d 865; **Ex Parte Davis**, 269 Ala. 58, 110 So. 2d 306; **Ex Parte Cranmore**, 273 Ala. 4, 129 So. 2d 688.

This Court has held that the law of practice of a State must be complied with in order to properly bring constitutional questions to this Court. An orderly method for judicial review of this Court could reasonably require no less. This Court has recognized this and has so held.

The rule in this regard is stated in **John v. Paullin**, 231 U. S. 583, 34 S. Ct. 178, 179, 58 L. Ed. 381:

"Without any doubt it rests with each state to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise, and the law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law. Calian v. Bransford, 139 U. S. 197, 35 L. Ed. 144, 11 Sup. Ct. Rep. 519; Brown v. Massachusetts, 144 U. S. 573, 36 L. Ed. 546, 12 Sup. Ct. Rep. 757; Jacobi v. Alabama, 187 U. S. 133, 47 L. Ed. 106, 23 Sup. Ct. Rep.; Halbert v. Chicago, 202 U. S. 275, 281, 50 L. Ed. 1026, 26 Sup. Ct. Rep. 617; Newman v. Gates, 204 U. S. 89, 51 L. Ed. 385, 27 Sup. Ct. Rep. 220; Chesapeake & O. R. Co. v. McDonald, 214 U. S. 191, 195, 53 L. Ed. 963, 965, 29 Sup. Ct. Rep. 546."

It has long been settled that the Supreme Court acquires no jurisdiction to review the judgment of a State court of last resort unless it affirmatively appears on the face of the record that a Federal question constituting an appropriate ground for such review was presented in and expressly or **necessarily** decided by such state court of last resort. **Whitney v. People of State of California**, 274 U. S. 357, 47 Sup. Ct. 641.

It is also fully settled that where a constitutional question is not properly presented to the State Appellate Court of last resort, and for this reason, under state practice, is not decided or passed upon by such Court of last resort, the question is not before the Supreme Court on certiorari to the State court. **Barbour v. State of Georgia**, 249 U. S. 454, 39 S. Ct. 316, 317; **Louisville & Nashville Railroad Company v. Woodford**, 234 U. S. 46, 34 S. Ct. 739, 741; **Taylor v. City of Birmingham**, 35 Ala. App. 133, 45 So. 2d 53, **cert. den.**, 253 Ala. 369, 45 So. 2d 60, **cert. den.**, 340 U. S. 832, 71 S. Ct. 45; **Michel v. State of Louisiana**, 340 U. S. 832, 71 S. Ct. 45.

We respectfully submit that this Court should not review this case on the merits because of failure of the Petitioner to properly present the Constitutional question to the Court of last resort in the State of Alabama, i. e., The Supreme Court of Alabama.

The Petitioner on page 2 of his brief states that this case involves Section 1 of the 14th Amendment to the Constitution of the United States.

Section 1 of the 14th Amendment is as follows:

"Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Petitioner at page 10 of his brief says he was

". . . denied due process of law secured by the Fourteenth Amendment in that he was convicted of crime without evidence of guilt . . ."

Without waiving our contention that the Petitioner is not entitled to a review of the alleged constitutional questions argued in his brief by this Court under 28 United States Code, Section 1257 (3), or otherwise because he has not presented such questions to the Supreme Court of Alabama so as to obtain a decision on such constitutional questions (Whitney v. People of State of California, 274 U. S. 357, 47 Sup. Ct. 641) we will now discuss the other issues argued by the Petitioner.

Was the Petitioner convicted of an offense without evidence of guilt?

The Petitioner was tried in the Circuit Court of the Tenth Judicial Circuit of Alabama. He was tried by a Judge sitting without a jury. This was the Petitioner's choice. The Petitioner could have been tried before a jury had he so elected. Section 587, Title 37, Code of Alabama of 1940, as amended. The City of Birmingham is not authorized to demand a jury for the trial of a case appealed from its Recorders' Court. **Ex Parte Hall**, 255 Ala. 98, 50 So. 2d 264.

The complaint under which the Petitioner was convicted charged as follows:

> "Comes the City of Birmingham, Alabama, a municipal corporation, and complains that Fred L. Shuttlesworth, within twelve (12) months before the beginning of this prosecution, and within the City of Birmingham or the police jurisdiction thereof, **did knowingly and wilfully interfere with, hinder,** or prevent **a police officer of the City of Birmingham; namely, Jamie Moore, Police Chief** for the City of Birmingham, **in the discharge of his legal duty** in that said defendant did knowingly and **wilfully place himself between said officers and a group of people commonly called 'freedom riders' when said people were being placed in protective custody** by said officer, and said defendant **did** knowingly and **wilfully refuse to move out of the way of said police officer after being so ordered, contrary to and in violation of Section 856 of the General City Code of Birmingham of 1944.** (Emphasis added.) (R. 4.)"

Section 856 of the General City Code of Birmingham is as follows:

> "Any person who knowingly and wilfully opposes or resists any officer of the city in executing, or at-

tempting to make any lawful arrest, **or in the discharge of any legal duty,** or who in any way interferes with, hinders or prevents, or offers or endeavors to interfere with, hinder or prevent such officer from discharging his duty, shall on conviction, be punished as provided in section 4." (Emphasis added.)

All courts in the State of Alabama take judicial notice of all ordinances, laws and by-laws of the City of Birmingham. Acts of the Regular Session of the Legislature of Alabama of 1943, page 183; **Monk v. Birmingham,** 87 F. Supp. 538; **Smiley v. Birmingham,** 255 Ala. 604, 52 So. 2d 710.

Section 910 of the General City Code of Birmingham of 1944 of which this Court has judicial knowledge is in part as follows:

"Sec. 910. Functions of Department.

(a) General. The Police Department shall be charged with the **preservation of the peace and order of the city, the protection of all persons** and property within the city, and the enforcement of all criminal ordinances and all criminal laws of the city and the state. The department shall suppress all riots, disturbances and breaches of the peace . . ." (emphasis added).

Section 6 of the General City Code of Birmingham of 1944 is as follows:

"Sec. 6. Election between provisions for purpose of prosecution.

In all cases where any person is charged with an act or omission which is prohibited or made punishable by different sections of this code or by different ordinances, the court may elect on which of said ordinances or sections to proceed, and all further

proceedings in the case shall be in reference to and controlled by such election (1930, § 4914)."

Let us take said Section 856 under which the Petitioner was convicted and examine it as to whether it is "unconstitutionally vague" as argued by him. The ordinance is clearly directed against any one who "hinders" an officer in the discharge of his duty. "Hinder" is a common word and means interfere, impede, encumber, retard, delay, obstruct, block or thwart (See standard dictionaries). Certainly said Section 856 is not vague as to what is meant. It is in the public interest that bystanders, busybodies, agitators, race baiters and others should not hinder a police officer in the performance of his duty of maintaining law and order and preserving the peace. The fact that the word "hinder" is applicable to different degrees of conduct does not make it so vague as to be unintelligible. Said Section 856 of the 1944 City Code was brought forward from the 1930 City Code where it appeared as Section 5495. An ordinance similar to this is found in the ordinances of many cities and in state laws. Even the Congress has enacted statutes making it an offense to "hinder" a public officer in the performance of his duty. Among others, 34 Stat. 157, 159, provides in Section 11 as follows:

"Sec. 11. That no person shall interfere with any member of the board for the condemnation of insanitary buildings or with any person acting under authority and by direction of said board in the discharge of his lawful duties, nor **hinder**, prevent, or refuse to permit any lawful inspection or the performance of any work authorized by this Act to be done by or by authority and direction of said board" (emphasis added).

This Court in **District of Columbia v. Little**, 339 U. S. 1, 70 S. Ct. 468, discussed phraseology similar to the phraseology of said Section 856. If said Section 856 is

"unconstitutionally vague" as argued by the Petitioner, the **Little** case, supra, does not so indicate as to a similarly worded regulation or law. In **Little** this Court commented on the fact that the regulation there involved did not include the word "hindering". In Little this Court indicated that the use of the word "hindering" would enlarge on the proscribed acts referred to in the District regulation under consideration with these words:

> "It (the District regulation) does not even prohibit 'hindering' or 'refusing to permit any lawful inspection,' in sharp contrast with a separate inspection statute enacted by Congress for the District which adds these phrases to prohibitions against 'interference' and 'prevention'."

We respectfully submit that said Section 856 is not "unconsfitutionally vague" as argued by Petitioner. If it were so, the regulations discussed in Little would also be unconstitutionally vague and many other laws and ordinances throughout this county would likewise fall and great injury to the public interest will result and law enforcement officers will be impeded in their efforts to enforce the laws.

We respectfully contend that said ordinance is valid and constitutional.

The next question we submit is to determine whether or not the complaint charges the Petitioner with an offense under said Section 856. The complaint charges the Petitioner with the following conduct.

> ". . . **did knowingly and wilfully interfere with, hinder,** or prevent **a police officer of the City of Birmingham; namely, Jamie Moore, Police Chief** for the City of Birmingham, **in the discharge of his legal duty** in that said defendant did knowingly and **wilfully**

place himself between said officers and a group of people commonly called "freedom riders" when said people were being placed in protective custody by said officer, and said defendant **did** knowingly and **wilfully refuse to move out of the way of said police officer after being so ordered, contrary to and in violation of Section 856 of the General City Code of Birmingham of 1944."**

The above complaint clearly charges that the defendant interfered with and hindered the Police Chief in the discharge of his legal duty. The particular act which constituted interference or hinderance was set out specifically in the Complaint as follows:

> "(the Petitioner) did knowingly and wilfully refuse to move out of the way of said police officer after being so ordered . . .."

The record clearly shows that the Petitioner did interfere with or hinder the Chief of Police in performing his duty. The record shows the following facts relating to the arrest of Petitioner.

At the time the Petitioner was arrested there was a large crowd in and around the bus station (R. 16, 20, 21, 28, 37, 38). Captain Jack A. Warren estimated the size of the crowd to be approximately 250 or 300 persons (R. 32). The crowd was in a boisterous and jeering mood and some of the crowd yelled out, "Take the police away and we will take care of it" (R. 16). Other witnesses also testified as to the dangerous emotion of the crowd or mob. Captain James W. Garrison testified things were tense at the bus station (R. 26, 27), and he felt the Freedom Riders were in danger actually of their lives (R. 27). The attitude was belligerent, storming, and overall anger (R. 28), and it was directed toward the Freedom Riders (R. 29). Captain Jack A. Warren testified there was a great

deal of tension at the bus station (R. 31, 32): "You could see it in the faces of the people in the crowd, you could tell it in the talking to themselves and their muttering and trying to press forward toward the bus loading platform. I was very much aware of that. As a matter of fact, that is the reason I was there" (R. 32). Officer T. T. Trammell testified there was a lot of unrest at the station and it seemed like everything could erupt in one fast moment (R. 37, 38).

At the time of Petitioner's arrest there were 30 or 35 or maybe 40 policemen at the bus station, and during the week approximately 80 per cent of the entire police force was engaged at the bus station at one time or another (R. 29). The duties of these officers were described by Captain James W. Garrison as follows: "Well, we had some officers that stayed right with these Freedom Riders all the time. We had others that was assigned to keep back the crowds. We had others to work traffic at the different intersections. **We had 19th Street blocked entirely** and had 7th Avenue blocked between 18th and 19th Streets to avoid cars just continuing in a circle. And some were inside the bus station and stayed in the waiting room the entire time" (R. 28, 29).

The Freedom Riders were unable to get a driver to drive the bus (R. 28, 29, 42, 43).

The conduct of the Petitioner hindered or interfered with Chief Jamie Moore when he was placing the Freedom Riders in protective custody (R. 26, 31).

Petitioner's attorney asked Captain Garrison of the Police Department a direct question as follows: "Did the defendant's conduct in any way make your arrest or your duty in putting these people under protective custody any harder?" Captain Garrison answered "Yes . . . by continually getting between us and them . . . and he kept

milling around and wouldn't move on when we asked him to and things were kind of tense over there at that particular time" (R. 26).

Chief Moore told the Freedom Riders who he was, i. e., Chief of Police of the City of Birmingham, and that he was taking them into protective custody due to the circumstances at the bus station (R. 15, 16, 17, 22).

Chief Moore told the Petitioner to leave the bus station, that he was not concerned with what was happening, but the Petitioner did not leave but got between Chief Moore and the Freedom Riders and would not leave on order.

Captain James W. Garrison also told the Petitioner to move on, and the Petitioner continued to interfere (R. 22, 23).

The Petitioner knew Chief Moore and his capacity with the City (R. 45, 46).

Pages 43, 44 and 45 shows by the Petitioner's own testimony that he was hindering or interfering with Chief Moore. His answer to his own Counsel's question was as follows:

"Q. What did the Chief say when he walked up to the group?

A. He identified himself and said, "I am Chief Moore," or words to that effect, Chief of the Birmingham City Police, and we have decided to arrest you all for your own protection."

And I asked him what did he say, and he said he decided to arrest us for our own protection. And then he recognized me in the crowd and he said, "Shuttlesworth, are you with the group?"

I said, "I am. We have been trying to get the bus out for two hours or more."

And he said, "Well, you go on, I don't want any trouble out of you."

And I said, "I am with the group and I want to catch a bus." And he said "If you don't go on, I will have to arrest you." And I said, "Well, whatever happens on all them will happen to me; we are all together." . . .

. . . Q. Did you say anything other than what you had just testified to?

A. That was the substance of what was said.

Q. Is that all of what you said in substance?

A. Yes. After he repeated the second time for me to go home, then he said to this Officer Garrison, I believe, "Put him under arrest."

The Petitioner was a resident of the City. The substance of the record clearly shows that at the time the freedom riders were taken into protective custody for their own protection the Police believed all of them to be nonresidents passing through the City of Birmingham en route to Montgomery, Alabama, and that they were marooned in the Bus Depot. The police knew the Petitioner to be a local man and that he did not come into the City with the freedom riders.

The presence of the freedom riders in Birmingham at that time (only a few days after a bus had been burned on the highway), only a few days after other so called freedom riders had been attacked at another bus station in the City (R. 16) the refusal of bus drivers to take out any bus on which they rode, the crowd or mob gathered around the bus station, the coming of night time all presented a grave crisis. **The issue of law and order was paramount. The record in this case is completely devoid of any protest, objection or resistance of the freedom riders to being taken into protective custody.** The action of the police in furnishing the freedom riders with a safe

place of refuge probably saved some of their lives, as well as the lives of others, and the record indicates they accepted this safe place of refuge without objection or comment.

The Police acted to maintain law and order. The Police acted on facts which were apparent to them. The Police are not constitutional lawyers and should not be. They acted in a practical manner. Their actions were not objected to by the freedom riders. The Petitioner hindered or interfered with the action of the Police in removing the freedom riders from the scene, which removal was necessary in the judgment of the Police to prevent a riot. The action of the Police was successful. Their action prevented serious injury or loss of life. They are to be commended. The Petitioner did wilfully interfere with the police officer in maintaining law and order.

The Petitioner argues that he was convicted of "Assault" for which he was not charged. He argues this because the Court of Appeals of Alabama stated that he could have been convicted of simple assault. Certainly if a person assaulted a police officer while the officer was in the performance of his duty, he could be prosecuted under either the section relating to assault or said Section 856 of the City Code. Under such circumstances the same facts would justify a conviction under either section and the prosecuting authorities could elect which section to proceed under. Section 6 of the General City Code of the City of Birmingham of 1944 clearly provides for this election as follows:

> "Sec. 6. Election between provisions for purpose of prosecution.
>
> In all cases where any person is charged with an act or omission which is prohibited or made punishable by different sections of this code or by different

ordinances, the court may elect on whic' of said ordinances or sections to proceed, and all further proceedings in the case shall be in reference to and controlled by such election. (1930, § 4914.)"

So it is clear that the Petitioner was **not** convicted of violation of a law for which he was not charged. The Court of Appeals of Alabama stated that "Shuttlesworth blocked the Chief's path. . . ." The evidence set out in the record supports this and shows that Shuttlesworth would not leave the scene free of arrest so that the Chief of Police could proceed with his work of preventing a catastrophe.

The Petitioner claims he has a constitutional right to get in the way of the police officers. He was a stranger to the proceedings between the Chief and the freedom riders. He was not in transit as they were. Whether or not the Freedom Riders could have constitutionally been taken into custody was a matter between them and the officers. No attempt was made to take the Petitioner into protective custody. All he had to do was leave the area in the station where the Freedom Riders were being escorted to a place of refuge.

Suppose the police had decided that the white people in the vicinity of the bus station had a constitutional right to go where they pleased so long as no law was then presently being broken. Chief Moore testified that some of the people who were threatening trouble were arrested around the bus station that day and ". . . we moved lots of people away from the bus station. Some more were arrested in and around there" (R. 20). The record indicates there were white people who refused to leave the bus station or refused to move on when ordered or otherwise indicated they might cause trouble and they were arrested. You cannot cure a riot (such as had happened at another

Birmingham bus station previously and had happened in the City of Montgomery, Alabama) after it has started any more than you can cure cancer after it reaches the terminal stage. Medical experts tell us cancer can be cured if caught soon enough and police officers know that the correct way to handle a riot or a mob is to recognize its early manifestations and to **prevent its occurrence or formation.** That is what the officers did in this case. Suppose a lawabiding white citizen insisted upon driving around the block by the bus station when ordered by the police not to do so. Could such a person constitutionally claim the right to do so and thus hinder the work of the police? If a lawabiding citizen could do so, then a person bent on creating disorder could do the same. If the Petitioner could claim a right to mingle with the transit freedom riders over the objections of police, then on what ground could the two or three hundred people milling around the bus station be denied a right to do the same. If they had been so permitted, does this Court not know what would have happened?

We do not wish to depreciate constitutional rights. But constitutional rights are not unlimited. A great justice of this Court once said that freedom of speech carries with it no right to yell "Fire" in a crowded theatre. Due process of law does not prevent the destruction of private property when necessary to prevent the spread of a fire.

The Petitioner argues that the Chief of Police was not **in the discharge of a legal duty.** He appears to take the position that the taking of the freedom riders into protective custody and furnishing them a safe place of refuge was an illegal arrest. First whether it was a legal or illegal arrest or no arrest at all is a matter between the officers and the freedom riders and not between the officers and the Petitioner. It cannot be disputed even by the peti-

tioner that the action of the police was motivated by anything but a desire to **protect** the freedom riders. The record shows no malice by the police against the freedom riders or the petitioner. The Chief did not want to have the Petitioner arrested and told him so. He was asked to leave. The petitioner **insisted on his own arrest** even though he was told that he was not being arrested (R. 44).

Section 910 of the General City Code of 1944 places a duty upon the Police Department as follows:

> "The Police Department shall be charged with the preservation of the peace and order of the City, the protection of all persons and property within the City. . . ."

Thus, the police were attempting to preserve the peace and protect persons and their actions were calculated to do this, a duty placed upon them by ordinance, at the time Petitioner hindered or interfered with them. There can be no argument that the end result the preservation of peace and the protection of persons was a legal duty which the police were required to accomplish, if possible. Therefore, they were in the discharge of a legal duty whether or not the means selected was proper or improper. The police did not intend that the means or method which they determined was necessary should affect the Petitioner. He introduced himself into the scene. He was an interloper. He was a bystander who kept getting in the way. He was arrested and convicted of violating a valid ordinance of the City of Birmingham. If the Petitioner is not subject to arrest then will not a police officer be subject to harassment and interference by third persons who are so inclined to interfere whenever he makes an arrest in a public place? Should such an officer be required to discuss the facts and the law involved with third persons at the time of the arrest and submit to such third persons

congregating around the place of arrest so as to endanger the safety of the officer and his prisoner or prisoners.

Should this court reverse this conviction because of the actions of the officers in taking the freedom riders into protective custody, it is respectfully suggested that it consider what would in all probability have happened to these same freedom riders and to the outnumbered officers of the law had the police not acted as they did.

The general scope and authority of a police officer in giving orders in the performance of his duty was discussed in **State v. Taylor,** 18 A. 2d 36, 38 N. J. Super. 6, in the following language:

> "* * * The duty of police officers, it is true, is "not merely to arrest offenders, but to protect persons from threatened wrong and to prevent disorder. In the performance of their duties they may give reasonable directions." People v. Nixon, 248 N. Y. 182, 188, 161 N. E. 463, 466. Then they are called upon to determine both the occasion for and the nature of such directions. Reasonable discretion must, in such matters, be left to them, and only when they exceed that discretion do they transcend their authority and depart from their duty. The assertion of the rights of the individual upon trivial occasions and in doubtful cases may be ill-advised and inopportune. Failure, even though conscientious, to obey directions of a police officer, not exceeding his authority, may interfere with the public order and lead to a breach of the peace.' People v. Galpern, 259 N. Y. 279, 181 N. E. 572, 83 A. L. R. 785 (Ct. App. 1932).
>
> "Failure to obey a police order to 'move on' can be justified only where the circumstances show conclusively that the order was purely arbitrary and was not calculated in any way to promote the public order.

> As was said in the Galpern case, the courts cannot weigh opposing considerations as to the wisdom of a police officer's directions when he is called upon to decide whether the time has come in which some directions are called for."

Police officers of this nation face trying times in the maintenance of law and order. Law and order is paramount to all benefits flowing from a free society. Without law and order, all other benefits would be from a practical standpoint nonexistent. All the laws on the books designed to maintain law and order depend upon the police officers of our cities and the peace officers of the counties and the states. These officers are in the front line of battle. We respectfully contend that orders or directions of a police officer designed to maintain law and order in a public place should be obeyed without question by the public unless such order is so unreasonable as to be arbitrary and capricious. This we believe is necessary to public protection. It is the reason why the term "police power," as applied to municipalities and the state, has never been and cannot be limited by definition. A police officer of a municipality, in acting under municipal ordinances, is exercising a portion of the police power of the municipality which is necessary to the maintenance of law and order. If orders of a police officer given by him for the purpose of protecting persons, performing his duty, preventing eminent violations of laws, or preventing riots are not sustained when they are not clearly arbitrary and capricious, we risk public disorder on a large scale.

The action of the police officers in this case was not arbitrary or capricious and was reasonably designed to maintain law and order and protect the persons of the freedom riders. They were not charged with violating any law and did continue their journey when bus drivers were available.

We respectfully contend that the judgment of the Court of Appeals of Alabama should not be disturbed.

Respectfully submitted,

.....

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